

## Why not a binding plebiscite...as first proposed in detail by CLA?

The argy-bargy about whether or not to plebiscite over same-sex marriage can be solved in a trice.

All the government has to do is follow the advice provided by Tim Vines, Vice-President of Civil Liberties Australia, who was the first person to propose in detail – in February 2016 – that a plebiscite could be used to confirm an already-passed law.

That is, parliament would pass a same-sex law, but delay its implementation until the concept is passed by a majority of voters in a plebiscite.

That way, there would be certainty that the choice of citizens made in a compulsory plebiscite would be honoured. <http://www.cla.asn.au/News/5851-2/>

Last month, barrister guru Bret Walker agreed with CLA's Vines's opinion, saying that using a 'contingent commencement clause' would be legitimate. <http://tinyurl.com/j9bsvqf>

## Spooks look set to self-examine...

The Turnbull government is undertaking the first big intelligence review since 2011 and the third since the 11 September 2001 terrorist attacks on the USA.

But the review won't be wide enough and will start on the wrong premise.

It will consider only the "intelligence agencies", usually grouped as the domestic spooks ASIO, the Office of National Assessments which briefs the PM and national security committee, foreign intelligence outfit ASIS, the Defence Intelligence Organisation, the Australian Geospatial Organisation and the Australian Signals Directorate.

Just analysing these bodies only ignores the civil society data surveillance programs that have been exfiltrated out of the 'intell' field into the police domain, like the Australian Criminal Intelligence Commission and its CrimTrac sub-branch. ACIC is increasingly a repository of Stasi\*-like data linking all Australian citizens, from personal photos to phone records.

State police forces also have massive holdings of intelligence data. The military is also increasingly a bigger player in the intelligence and terrorism space, particularly in emergency response.

Any review should start by considering how Australian citizens can have their privacy rights and civil liberties guaranteed by a new federal law...not how agencies can pry into Australians' lives.

If true to past form, the review will examine how local spooks and police can collate vast quantities of personal information, within Australia and worldwide, about Aussie citizens and visitors without having to be open and transparent about it.

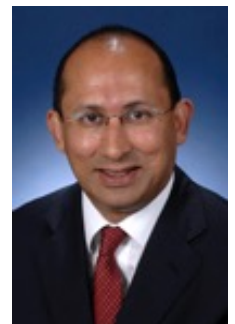
The first leaked news story claimed the review was to "tackle the unprecedented need for the nation's six intelligence agencies to balance immediate security intelligence requirements to combat terrorism including 'lone wolves' with longer-term considerations about geo-strategic changes flowing from the shift in power and wealth to the Indo-Pacific region".

If you need intelligence and data on potential "lone wolves", you need to hold data on every citizen.



Names proposed for a spook supremo to head the review include Allan Gyngell, formerly of ONA, as well as former ASIO and ASIS head David Irvine (photo left) and former ONA boss and DFAT secretary Peter Varghese (photo right).

The 2004 report by former diplomat Philip Flood focused on foreign intelligence agencies and came in the wake of mistakes in Australia and among allied nations, particularly the US and UK, about Iraq's weapons of mass destruction program. That was followed by a 2011 review by former Attorney-General's Department head Robert Cornall and academic Rufus Black. <http://tinyurl.com/h4bohw2>



Civil Liberties Australia believes any review should be headed by a three-person committee which includes a spook expert (perhaps one of those mentioned above), a politician who can be trusted to take an independent stance (Andrew Wilkie MHR would be the perfect choice), and a known statesman or

woman with a strong human rights and civil liberties pedigree (AHRC boss Gillian Triggs, or independent constitutional law expert George Williams).

The review should aim to halve the amount of money spent on spooks, police and the military since the massive overspend on staffing and resources, including in the 'terrorism branches' of Defence and on federal and state police, by the Howard and subsequent governments operating in panic mode after each overseas terror attack of the past 15 years .

*\*The Stasi – state intelligence agency – was the notorious East German internal spy agency that allegedly held a file on every citizen. <http://tinyurl.com/lognekz>*

## **ASIO wants to do away with judicial oversight**

ASIO has proposed scrapping the need for judge-approved warrants to detain and question Australians for up to a week without charge in terrorism investigations, in a watering down of safeguards that has alarmed lawyers and rights advocates.

The power to grant the security agency a controversial "questioning and detention warrant" would rest instead with the Attorney-General – a situation the Law Council of Australia has branded "unprecedented".

The changes being requested by ASIO would also remove a current separate requirement that an independent legal authority, such as a retired judge, is present when a person is being questioned. Rather, oversight of questioning would rest with the intelligence watchdog, the Inspector-General of Intelligence and Security.

Detention warrants have never actually been used in the 11 years they've been in place. Questioning warrants have been used 16 times since 2004, though not since 2009.

University of NSW law dean, Prof George Williams, said countries such as the United States and Britain did not permit such detention for questioning. "To my knowledge, Australia is the only Western democracy that enables people who are not suspects to be held for up to a week coercively for intelligence-gathering purposes," he said.

"The thought of removing what is one of the few significant checks on the powers is deeply concerning." <http://tinyurl.com/z8m6hbp>

### **Liberty and rights are personal:**

*For most of the world, rights and liberties simply pass by, usually unnoticed, mostly without individual care or responsibility...unless it happens to be your own right, or the wrong someone has done to you, personally.*

## **It costs us more than \$500,000 a year per person to treat refugees cruelly**

The cost of stopping refugee boats has been estimated at more than \$9.6 billion since 2013, and will be another \$5.7bn over the next four years, according to a study by Save the Children (StC) and UNICEF.

The study estimates the cost of keeping around 2000 asylum seekers and refugees on Manus Island and Nauru at \$400,000 per person, compared with just \$33,000 for those on bridging visas in the Australian community.

However, after the study was released, the Immigration Department itself revealed the cost was even greater: its records show that average spending per detainee was \$698,000 in 2012-13, reducing to \$529,000 per person last financial year. The department was responding in federal parliament to a highly critical report from Commonwealth Auditor-General Grant Hehir. <http://tinyurl.com/jjqwe6>

The StC-UNICEF reports says the policy is inflicting incalculable harm on asylum seekers, especially children; straining bilateral relationships; and damaging Australia's bid for a seat on the UN's Human Rights Council.

Their estimate excludes the costs of inquiries by the parliament and the Human Rights Commission into Australia's detention system, of defending numerous legal challenges in the courts and of paying compensation to those who have suffered damage. <http://tinyurl.com/zdphg6c>

For comparison, the average cost of keeping an adult\* in prison in Australia is about \$100,000 a year, or roughly \$300 a day (Productivity Commission, Report On Government Services, annual series).

“Imagine if Australia treated refugees with compassion,” Civil Liberties Australia CEO Bill Rowlings says. “We could probably save the nation about \$2bn a year, and save the refugees from certain mental anguish and probable lifetime psychiatric problems.”

\* It costs about double that amount to keep a child in juvenile detention in Australia. <http://www.cla.asn.au/News/prison-costs-up-numbers-up/>

## **Detained indefinitely for running a red light at 10kph over the speed limit**

A probationary driver’s licence was the first formal paperwork refugee Amir (not his real name) acquired in his life, Michael Gordon wrote last month in *Fairfax media* online.

But Amir was caught running a red light, 10kph above the speed limit, without the licence in his pocket. He lost the licence, and was fined \$1200 he did not have at Victoria’s Ringwood Magistrates Court.

Had he been an Australian resident, he would have been given time to pay the fine. But Amir, an Iranian house painter who arrived on a boat in 2010, quickly found himself back in detention.

First he was held in Melbourne, then in Darwin and, for the past year, he has been on Christmas Island, having fallen foul of a character test that is applied at the discretion of Immigration Minister Peter Dutton.

“Slated for closure next year, Christmas Island hosts Australia’s forgotten detention centre, a huge grey maze of concrete and steel, security doors and cameras, ringed by an imposing new wire fence since a mentally disturbed refugee, Fazel Chegeni, escaped and died last November,” Gordon wrote.

“Fewer than 30 asylum seekers are held there, but they are sprinkled among a detainee population of about 200 that includes those Dutton has accurately dubbed ‘some of the country’s most hardened criminals’.

“While debate about Australia’s border protection regime has focused on the plight of those in limbo on Manus Island and Nauru, the situation of many of those on Christmas Island is more troubling in two respects: the asylum seekers are terrified of their fellow detainees and this is happening on Australian soil.” Read the full story: <http://tinyurl.com/zmuyquc>

## **Timor Leste wins first round in ‘spycabinet’ case against Australia**

Timor Leste will have its case against Australia over a disputed maritime boundary heard by The Hague’s permanent court of arbitration after Australia’s claim that the court had no jurisdiction was formally rejected last month.

TL asked for the arbitration process to decide who owns a large oil and gas field, worth probably \$40 billion. The two countries have a revenue-sharing agreement, which TL wants to re-negotiate. Australia wants to stall major negotiations until 2056, when an agreement runs out.

The conciliation process will take place behind closed doors over the next year, the court said.

TL says the relevant sharing agreement should be scrapped because, six years after it was signed, it was revealed Australia had bugged the TL government’s cabinet room, with listening devices implanted by Australian Security Intelligence Service agents pretending to be aid workers renovating the office.

Australia has never admitted to the espionage, though its domestic spy agency ASIO and the federal police raided the Canberra offices of TL’s lawyer Bernard Collaery, and seized the passport of the intelligence agent who blew the whistle on the spying operation. <http://tinyurl.com/hjyqqu>

Civil Liberties Australia held a special forum in Canberra in 2015 to air as much of the espionage dirty linen as could be made public: <http://www.cla.asn.au/News/asis-asio-are-govts-bother-boys/>

*PHOTO: Bernard Collaery speaking at the special CLA forum.*



## Senate forces new inquiry into TPP

The Senate has decided to hold an inquiry into the Trans Pacific Partnership agreement...separate and in addition to the inquiry by the Joint Standing Committee on Treaties (JSCOT, pron 'jay-scot').

The Greens and the Nick Xenophon Team moved for the inquiry, and were supported by the ALP.

The government-dominated JSCOT Inquiry into the TPP, which will endorse the TPP, is due to report in the week of 28 November 2016.

Without a Senate Inquiry, the government might have tried to push through the implementing legislation in December during the US Congress's lame-duck period, post election but before inauguration of a new president. The current Obama Administration is trying to get the TPP through before the new Congress starts in 2017, according to anti-TPP campaign leader in Australia, Dr Pat Ranald of AFTINET.

"The good news about the timing is that the Australian Senate can now refuse to consider the implementing legislation until its own Inquiry has reported, which won't be until 7 February 2017. By then there will be a new US administration which is less likely to pass the TPP legislation because Clinton says she want to re-negotiate it and Trump says he will tear it up," Dr Ranald said.

It would be virtually pointless for the Australian government to proceed with the legislation in the event that the US does not endorse it.

JSCOT is holding hearings: Perth October 5, Melbourne October 7, Canberra October 17. The inquiry website will have the latest information: [http://JSCOT\\_websitewww.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Treaties/TransPacificPartnership](http://JSCOT_websitewww.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/TransPacificPartnership)

## ODD SPOT: Is David Smith a criminal?

Sorry tale of a poor security check, where they got the wrong David Smith: <http://tinyurl.com/h9ja3tk>

And, in the same vein, please see the case of Stephen Wilce who was – briefly – NZ's top defence scientist: <http://tinyurl.com/hkm6v1m>

NOTE: The David Smith of the headline is not Sir David Iser Smith, the former Secretary to the Australian Governor-General, famous or notorious for being the great parliamentary proroguer and town crier – "God Save The Queen" – on the steps of now-Old Parliament House the day PM Gough Whitlam got the sack in 1975. Photo right: Sir David Iser Smith ((formerly Szmikowski <http://tinyurl.com/gqtcruv>) reads the Whitlam dismissal.



## Ex-journo gets prime job driving health data in Australia

Former NHS executive Tim Kelsey is an interesting appointment as CEO of the Australian Digital Health Agency because he was in charge of the UK digital health records scheme, Care.data, dumped by the UK's National Health System in July 2016.

The Department of Health said that Mr Kelsey, originally a journalist, was uniquely suited to the role because of his experience with data and digital platforms in health and personal privacy, Sue Dunlevy reported in *The Australian*.

The Care.data scheme to store patients' medical information in a single database suffered multiple delays and was then scrapped after major problems emerged over patient confidentiality. It was similar to Australia's 'My Health Record' that Mr Kelsey will now oversee.

My Health Record – in its various evolutions – has been a disaster for more than a decade, is reportedly a \$1billion project (according to the AMA), and is virtually useless. Only a smattering of GPs use it.

The schemozzle of My Health Record looks likely to be repeated by the Digital Transformation Office, a separate PM Turnbull-inspired attempt to create one online ID for every Australian using facial biometrics – a photo of you – in a system with more potential security breaches than even the UK health system was facing. <http://tinyurl.com/jl4bh4v>

## Sue Neill-Fraser case progresses:

Formal papers were lodged in late-September with the Supreme Court in Tasmania. It is expected the single-judge hearing into her right to appeal to a full court will occur before the end of November.



## **ABS stuffs up response to census stuff up, says Keane**

“The submission of the Australian Bureau of Statistics to the Senate economics committee inquiry into why the 2016 census was such an unmitigated stuff-up was ... stuffed up,” writes Bernard Keane in a perspicacious piece for Crikey entitled *‘Dear census bureaucrats, the problem isn’t me, it’s you’*.

“After being published online by the committee secretariat last week, it was hastily taken down because ABS had included some commercially confidential information about its contract with IBM in its submission,” he says.

“Reading the submission, you’re left with the impression the ABS had a perfectly fine census until those annoying 24 million Australians got involved.”

If you have access to Crikey, the Keane article is recommended.

## **Police, spooks hold hands out again...just in case something goes wrong?**

In a new bid for more money and staff– and possibly as insurance for failure – Australia’s police and spooks are demanding a national case-management system.

A timely leaked story appeared in *Fairfax media* late last month, just before parliament resumes in October. Counter-terrorism police were said to “fear crucial information may slip through the cracks in major investigations because...the country’s eight police forces have 18 different systems, and counter-terrorism police, who work in joint state and federal teams, are filing information twice – into two systems.”

Given that police and spooks have been given billions of dollars, and had their terrorism-related staffing has trebled, since September 2001, they should have no problem ensuring they have the right systems and ways of working together...without needing more cash.

Or is it a case of setting up a straw-man reason for failure, just in case they miss something they should have noticed. Poor liaison will never be solved by systems, CLA says: it takes real cooperative, personal effort across separate forces, which has always been lacking when any major terrorist problem has emerged anywhere in the world.

“The government spent \$9.8 million last year (2015) on a two-year pilot of a national criminal intelligence database,” the leaky article said. Surely, CLA believes, nearly \$10m extra funding is enough for Australia’s police and spooks to work out how to talk with each other and exchange relevant information sensibly and quickly.

For that amount of money, they could probably hold 20 Big BBQs around the nation, and get to know their counterparts in other forces on a first name basis. <http://tinyurl.com/hmvdyf8>

## **How can we make Australia’s federal election system better?**

Civil Liberties Australia will likely be making a submission to the parliament’s Joint Standing Committee on Electoral Matters, which is inquiring into the conduct of the 2016 federal election.

If CLA members would like to have a personal say, details are here: <http://www.aph.gov.au/em>

CLA is planning to:

- a. support the introduction of an electronic voting option, ASAP;
- b. propose that notice of donations/etc to political parties and candidates/politicians/party staff be instantly available online;
- c. propose that the ATO be tasked with ensuring propriety of donations (and with monitoring that MPs’ expenditure is within rules and guidelines); and
- d. propose that all donations or expenditure or support-in-kind be treated the same, and that any donation over \$10 be disclosed.

Comments are welcome.

## **CLA mounts OPCAT lobbying campaign – it is well past time for action**

Civil Liberties Australia is mounting a lobbying campaign into the Australian Parliament to alert new members to the fact that we have not incorporated OPCAT into domestic law.

OPCAT – the Optional Protocol to the Convention Against Torture – would oblige Australia to open up juvenile detention centres and jails to independent, international inspection regularly. It would likely put an end to the worst excesses, as exposed by *ABC TV* recently in the Don Dale centre in the NT.

Australia has signed OPCAT...in 2009. But the necessary ratifying, which involves all states and territories, is in limbo. Until that step is taken, the convention is not obligatory in Australia.

Whenever we formally ask the Attorney-General's Department, the AG, the Foreign Affairs Department and/or Minister about the progress of OPCAT, we are formally told: "It is under active consideration"...as it has been, since 2009 !

There is an online petition where you can add your name to Australians pushing for action on OPCAT: <http://tinyurl.com/jtnj2xf> The petition has been organised by Dr John-Paul Sangarran, whose background is available here: <http://tinyurl.com/jmoku3l>

## CLA could not possibly comment



The woman who some claim went overboard in helping to secure a tenable position for the Coalition government in the Tampa 'refugee children thrown into the sea' drama has resigned as head of the Finance Department.

Jane Halton was also well known for wearing high heels and animal print leotards, and being a rabid anti-smoker. Many politicians and bureaucrats will sing her praises; not all people who worked for or with her will. Civil Liberties Australia could not possibly comment.

*Photo: Halton is shown with her husband, Trevor Sutton (described as "one of three deputy Australian statisticians" at the ABS, and "responsible for the preparation of this year's census") in a Canberra Times May 2016 article, 'Canberra's top 10 power couples'. – Canberra Times photo <http://tinyurl.com/zmk5e7l>*

Clerk of the Senate Rosemary Laing also resigned last month after 26 years in the Department of the Senate in the Australian Parliament, and six years as the head honcho. Many MPS and bureaucrats will sing her praises: not all people who worked for her or with her will. Civil Liberties Australia could not possibly comment. <http://tinyurl.com/j5737jf>

## Silly law will make bikies harder to spot, CLA says

Motorcycle gangs are to be banned from wearing their colours in public anywhere in Queensland under a new package of laws the government says is aimed at serious organised crime.

The new law will extend the current prohibition on wearing colours in licensed venues into all public places across Queensland.

Premier Anastacia Palaszczuk said motorcycle gangs had been a very visible and intimidating part of organised crime. "The days of brazen, menacing rides through our streets and cities in daunting gang colours are over," Ms Palaszczuk said.

Police Minister Bill Byrne said the new laws would also retain additional mandatory penalties as an inducement for offenders to cooperate with police. <http://tinyurl.com/zmq2hyl>

## Eastman, the ACT case that continues to rack up millions in costs

A jury will decide David Eastman's fate if he is retried for the 1989 shooting death of ACT police chief Colin Winchester, hit twice in the back of the head while sitting in his car in a Mafia-like slaying.

Mr Eastman was jailed after being found guilty of murder in 1995, but an inquiry in 2014 found major flaws in forensic evidence used to link him to the crime scene, and that information he should have been given was withheld from him. After nearly 19 years behind bars, his conviction for the murder of ACT police chief Colin was overturned, and he was freed.

Since then, he has been fighting against the decision by the ACT DPP to conduct a new trial. The ACT Supreme Court in April 2016 threw out Mr Eastman's bid to permanently halt a retrial because, he claimed, a second trial could not be conducted fairly.

Eastman's lawyers told the court recently he would choose a jury trial, rather than a judge sitting alone. No judge has been appointed yet for the trial, which is expected to run for six months and involve more than 250 witnesses. It is likely a judge from outside the ACT would be brought in.

Estimates for the cost of the Eastman-Winchester legal cases over the past two decades run at more than \$15m. For 2016-17, the ACT DPP was allocated \$3.3m for the retrial, while ACT Legal Aid was given an extra \$1.7m. The people of the ACT have spent about \$1m a year on this one case.

Many people in the ACT cannot see the sense or the value in retrying a man who has already served more than 19 years in jail, who could be granted parole on his first day back in jail...if he is found guilty a second time.

Both the Office of the DPP and the ACT Policing arm of the Australian Federal Police were severely criticised in subsequent inquiries and hearings for their behaviour in the first trial. Many in the ACT believe the re-trying of Eastman has more to do with self-justification than justice.

As well as the other legal cases afoot, Mr Eastman is suing the ACT Government for wrongful imprisonment. If he wins that case, it is possible the ACT Government will face a payout of many, many millions of dollars. <http://tinyurl.com/zr8l44p>

## All capital police to get stun guns

All Canberra's police -- not just sergeants, as now -- are to get stun guns added to their hip armoury. Civil Liberties Australia vice-president Tim Vines said he remained opposed to a wider rollout of the weapons and called for a review of their use to date by ACT Policing.

"We've seen around Australia and around the world, that although Tasers are supposed to be used as a second to last resort ... we've seen that they have been used where other de-escalation strategies could have worked," he told the *Canberra Times*.

Mr Vines warned the weapons had proved lethal when used on individuals with underlying medical conditions, and those significantly affected by drugs and alcohol. Stun guns needed to be accompanied by best practice training, transparency, and use by experienced officers.



The Australian Federal Police Association rejected any assertion that stun guns were used indiscriminately. AFPA president Angela Smith told the *ABC*: "We don't use anything indiscriminately, and the (stun guns) have a video camera attached to them, and that's a level of oversight that the community can be happy with." <http://tinyurl.com/gt9mss7>

*PHOTO shows: Nine police who surrounded an unarmed man at the East Perth watch house used a stun gun on him 13 times even though he wasn't threatening them, the WA corruption watchdog has found. In the photo, three officers appear to be stunning the man at the same time. The incident only came to light because of a CCTV in the watch house, not because of stun gun cameras.*

## Law changed simply to save money?

Community groups are "alarmed" that the Tasmanian Government has not committed sufficient funding for drug and rehabilitation programs included in planned sentencing reforms.

Representatives from the Tasmanian Council of Social Service, Unions Tasmania, the Tasmanian Aboriginal Centre, Civil Liberties Australia in Tasmania and others have written to Attorney-General, Dr Vanessa Goodwin, to express their concern at the lack of committed funding.

Community Legal Centres Tasmania said extra programs were likely to cost more than \$2 million, but no extra funding had been provided.

Dr Goodwin said funding for the state's new sentencing options would be addressed in the 2017 budget. She said waiting until next year's budget would provide time for the Government to assess feedback from the courts on early results. <http://tinyurl.com/j9cdjmd>

**Anti-discrimination change not needed:** The Tasmanian Parliament should not increase complexity by enacting their proposed new anti-discrimination law amendments, Civil Liberties Australia believes. More law is not always for the better, Tasmanian Director Richard Griggs told the Justice department in a submission in September.

## Police want 'baseball bat' laws to hinder minor criminals

Police in Tasmania want to stop bikies and others fraternising to crack down on organised crime.

Police Minister Rene Hidding saying the Hodgman Government will not let the state become a "safe haven" for outlawed groups. However, lawyers have already warned that legislation in other states has been unworkable and point to a NSW Ombudsman's report released in July 2016 that said vulnerable groups had been targeted and police had consistently made errors enforcing the laws.

Tasmania Police assistant commissioner Glenn Frame told the *Mercury* the 'tighter' laws were a priority and new legislation should be on the table early in 2017. "The State's Consorting, Fortification and Association rules are currently being examined by the Department of Police Fire and Emergency Management and the matter is on our priority list," he said.

Tasmania and the ACT are the only jurisdictions not to have consorting laws, which supposedly prevent people with criminal backgrounds from associating with each other. <http://tinyurl.com/zadpa7o>

The laws look good on paper, but are basically big, dumb baseball bats for police to persecute minor crims by a figurative bash over the head: they never get used on the Mr Bigs of crime, CLA says.

## Election prospect in 2017 appears to kick start 'law and order' auction



WA Attorney-General Michael Mischin (photo) has denied his proposal to double the penalty for one-punch homicides from 10 to 20 years is an election stunt.

He has however agreed any bill is unlikely to pass Parliament before the WA election in March 2017. There are only a handful of sitting weeks of Parliament left and a backlog of bills to get through.

The offence of unlawful assault causing death was created in 2008. The Opposition proposed doubling the penalty for one-punch deaths in cases of domestic violence in 2012, but the proposed amendment was voted down by the current State Government. <http://tinyurl.com/gwa5uew>

## Cowboy cops want to nudge chase drivers to their deaths

Cowboy cops in WA want to "nudge" cars off the road legally during police chases.

WA police union president George Tilbury wants the power. He said a chase crash which killed two 'innocent bystanders' aged 60 last month might have been avoided if police had taken "proactive action". For him, such action includes a nationally-banned immobilisation technique, which police are not permitted to use in any jurisdiction in Australia. The barred 'cowboy' move involves a chasing police car nudging the rear side of a fleeing car at high speed, making it spin out and lose control.

The Tilbury call illustrates how rabid police associations – which are really unions – try to dictate to parliaments so that they adopt excessive techniques and laws for which there is absolutely no justification, CLA says. Nudging cars at high speed so that they crash would certainly kill or maim for life some drivers..and also innocent passengers, CLA says.

Police chases in WA have tripled over the past five years from 322 in 2010 to 1029 in 2015.

In most other Australian jurisdictions, police chases are reducing as sensible police find safer ways to do their jobs in cars. They are refusing to be goaded into chases by hyped-up 16-year-olds boys with too much testosterone in their systems: sometimes it is difficult to decided who is the dumber, the chaseses or the chasers. <http://tinyurl.com/jbag883>



## Male guard suspended over pregnancy of female prisoner

A male prison officer at Bandyup Prison in WA has been suspended after an inmate became pregnant. The guard apparently has denied wrong-doing, but was suspended after a 31-year old prisoner serving a four-year sentence for drugs offences, was found to be pregnant several months ago. The woman has had no known contact with men other than staff at the jail since starting her sentence.

The guard is being investigated for "serious misconduct", although in WA it is not illegal for a prison guard to have consensual sex with a prisoner. A report said the matter had been referred to the state's Crime and Corruption Commission.

"The allegation is uncommon and taken very seriously," the WA Department of Correctives Services said. "The investigation is expected to take at least five months." <http://tinyurl.com/zbyawr8>

...which makes it look like the state is waiting on a baby being born to conduct paternity tests, possibly involving DNA, CLA believes.



## ODD SPOT: Mooning eclipsed by new Victorian-era law

Mooning – baring bums in public – is now officially a crime in Victoria, the *NT News* reported last month.

Mooning was previously punishable under other laws but is now banned under specific legislation as part of an overhaul of sexual offence laws. First-time offenders face up to two months in jail while repeat offenders could spend six months behind bars.

The new act outlaws singing "an obscene song or ballad"...which proves Victoria is not a Rugby state.

Photo: The annual 'great moon' at the Livingstone airstrip in the Northern Territory, where mooning remains legal...and fun. -- *NT News* photo

## Sex laws brought into alignment

The legal age for consensual anal sex in Queensland has been brought into line with all vaginal and other lawful sexual acts, ending "archaic" legislation against homosexuals.

While 16 has been the legal age for most sexual activity, it was illegal to engage in anal sex until the age of 18 in Queensland, alone among Australian states.

The Labor government, independents and 28 Opposition (conservative Liberal National Party) MPs voted to pass the new law last month. The other LNP members did not vote. The two Katter's Australian Party members, Robbie Katter and Shane Knuth, were the only MPs to oppose the changes.

The word sodomy will also be replaced with anal intercourse in the criminal code to help reduce stigma. Qld Health Minister Cameron Dick said the laws finally corrected an injustice and protected the health of young people.

## Australian briefs

**Breath-drive replaces drink-drive:** Repeat drink drivers in Western Australia must install "alcohol interlock devices" in a crackdown on serious offenders. Offenders will pay \$1600 for the device, which requires passing a breath test before cars will start, will also be paid for by offenders at a cost of \$1600. The new rules began operating late last month. <http://tinyurl.com/zpb98gk>

**ICACT for the capital?** The ACT Liberals will set up an Independent Commission Against Corruption if they win the election on 15 October. This is a turnaround from early August, when the Liberal leader, Jeremy Hanson announced an "integrity package", including an extra \$3 million for the auditor-general and \$900,000 more for an independent public service commissioner...but specifically ruled out an 'ICAC' for the ACT (ICACT?) Labor leader Andrew Barr may be forced to follow suit, while Greens leader Shane Rattenbury is already in favour of such a body. <http://tinyurl.com/jjb3x6h>

**Pain goes up in smoke:** MediWeed – medicinal cannabis – becomes legal next month (Nov 2016), the Therapeutic Goods Administration has decided. The federal government is creating a national regulator for marijuana products for therapeutic use listed on the Schedule 8 list for restricted drugs including morphine. Drugs must be prescribed by a doctor under state or territory laws. Non-medicinal marijuana is still illegal. <http://tinyurl.com/j4xwo8k>

**Do blind CVs create level employing field?** The WA public service is trialling blind CVs in an effort to remove gender, race and age bias in its hiring practices, Minister for Woman's Interests Liza Harvey told *ABC Radio* last month. The trial was operating across positions from graduate to executive level. She said she expected to receive a report of the trial shortly. <http://tinyurl.com/hjsgcor>

**In case of courtly stupidity, ring Bell:** A 20-year legal battle over the fiscal corpse of Alan Bond's corporate empire, Bell Group, looks set to run another 10 years. The WA government, having spent \$200m, seems likely to further chase a zero result through the courts. Premier Colin Barnett has admitted "there would probably be no cash left at the end of the wrangling", says *WA Today*. "Speculators and lawyers have lived off this, have been feeding on the carcass," he reportedly said. Civil Liberties Australia believes we need a better legal system than one that takes 30 years to get nowhere. We may need people other than lawyers to devise such a system. <http://tinyurl.com/jzxymtz>

**Beware the legal eye-in-the-sky:** New drone laws allow anyone to fly a drone weighing less than 2kg for profit as long as they register with the Civil Aviation Safety Authority at least five business days before their first flight, and agree to operate by existing safety rules. They must at least 30m away from people, avoid populated areas, only fly during daylight hours, and be used at least 5.5km away from airports, aerodromes and helicopter landing sites. Farmers may operate drones up to 25kg on their own properties. <http://tinyurl.com/zx9akf3>

## CLA report – key activities for August 2016

Following a board-decided initiative, letters were sent to all new members of the new parliament, House of Representatives (HoR) and Senate, requesting a meeting with CLA representatives. The aim is to urge their support for OPCAT, and to inform them of the CLA's Better Justice project. The correspondence and meetings are also to gauge their particular interests and concerns in the rights and liberties field with a view to cooperating on future issues.

To date, of the 39 new HoR members, we have had positive replies from 10, and meetings have been arranged. Several have indicated they are unavailable. Only one of the 14 new Senators has responded positively so far, but many of the new Senators are taking some time to organise their office staff.

President Kris Klugman and CEO Bill Rowlings met with former 'Freedoms' Human Rights Commissioner, Tim Wilson (new Liberal member for Goldstein VIC), which was useful, though interrupted by divisions. In the new parliament, with a one-seat majority, divisions to record formal votes are being called much more regularly than in recent parliaments, and our allocated 30-minutes of meeting time was interrupted by two divisions, leaving about five minutes for discussion.

The meeting with Chris Crewther (Liberal, Dunkley VIC – photo) was far more satisfactory. He appears to willing to be open-minded about important liberties and rights issues.

With all such meetings, CLA is also alerting MPs to new liberties and rights issues likely to emerge in the area of genes because of developments in technology. We will be making gene developments a focus of attention in the new year.



The next series of meetings are scheduled when the parliament sits again, in mid-October, with Julian Hill (Lab, Bruce VIC) Brian Mitchell (Lab, Lyons TAS), Peter Khalil (Lab, Wills VIC), Rebekha Sharkie (NXT, Mayo SA) and Josh Wilson (Lab, Fremantle WA). The preponderance of Labor members is simply because they have been the ones to respond. Along with the President and CEO, Perth CLA member Margaret Howkins will attend some of these meetings, and Canberra CLA member Pauline Westwood will also take part.

We continue to promote the Better Justice project at all opportunities, in meetings and in letters to CLA members. For example, a successful meeting with Commonwealth Ombudsman and CLA member, Colin Neave, led to suggestions for follow up contacts among the judiciary throughout Australia. Meetings with CLA members John Simmons, Bill Stefaniak and Arved von Brasch were productive after exchanges of ideas.

Tasmanian directors Richard Griggs and Rajan Venkataraman have been active in two main areas: Richard is preparing material for a new push to encourage groups in Tasmania to spearhead a drive for a human rights act for that state, leading to possible 'mirroring' elsewhere as well as keeping the topic front of mind in the federal sphere. Rajan is driving the CLA OPCAT campaign for regular external inspection of detention facilities. He is building links to other individuals and organisations of like mind.

Editing and revising the history of civil liberties in Australia is being continued, aiming to complete the online 'draft' version in the next two months.

**Media:** VP and National media spokesperson Tim Vines commented on the proliferation of stun guns in September (see item above).

## International

### Human rights should guide medicine access: UN

A new report of the UN Secretary-General's High-Level Panel on Access To Medicines – Promoting innovation & Access to Health Technologies – wants human rights to drive health decisions, *The Lancet* medical journal said in an editorial on 24 September 2016.

An independent panel had sought ways to solve the disjunction between trade and the patent system in relation to the right to health, which was a barrier to affordable access to essential medicines, the panel said.

The panel renewed calls for an international R&D convention and more public financing for R&D. Concrete approaches to improve transparency, good governance, and accountability were all emphasised, including punitive action against parties pressuring countries using TRIPS flexibilities.

*The Lancet* condemned the US Government and the pharmaceutical industry "whose attempts to dilute the report's recommendations and block its release" were widely reported.

The UN should endorse the panel's recommendations quickly, *The Lancet* said, "especially as momentum to approve the Trans-Pacific Partnership (TPP), which also has negative implications for access to medicines, is gathering in the USA". <http://tinyurl.com/hzh8k8j>

### Gbay inmates cost \$US6m pp pa

Only 5% of the Guantanimeros were actually captured by Americans on a battlefield, a fact that goes unremarked by the media, says CLA's USA correspondent, Roger Fitch Esq., who also reports for the *Justinian* online legal journal.

The 779 men and boys have been gradually released – some through death – and after the latest mass expatriation, the count stands at 61 remaining, leaving a staff-to-prisoner ratio of 33-1 and an annual per capita cost of \$6 million...that is, the US is spending \$Aust 8m on each prisoner each year.

### Rights commissioner warns of growing xenophobia, bigotry

The UN's human rights chief Zeid Raad al-Hussein has accused US Republican presidential candidate Donald Trump and other leaders of spreading "humiliating racial and religious prejudice",

He warned a rise of populist politics globally that could turn violent in comments at a security and justice conference, *Reuters* reported.

The UN High Commissioner for Human Rights said he was addressing Dutch far-right leader Geert Wilders and other "populists, demagogues and political fantasists". Naming Trump, Nigel Farage in Britain and Marine Le Pen in France, among others, Prince Zeid accused them of using "fear" tactics similar to those of Islamic State (Daesh).

"Make no mistake, I certainly do not equate the actions of nationalist demagogues with those of Daesh," he said. "But in its mode of communication, its use of half-truths and oversimplification, the propaganda of Daesh uses tactics similar to those of the populists."

"History has perhaps taught Mr Wilders and his ilk how effectively xenophobia and bigotry can be weaponised," he said. "The atmosphere will become thick with hate; at this point it can descend rapidly into colossal violence," he warned. <http://tinyurl.com/zkfmtdtm>

### **ODD SPOT: All creatures great and private**

Google Street View, a function of Google Maps that allows users to zoom in on sites all over the world to see panoramic views of places from the ground, is serious about privacy, blurring license plates, people, some buildings, and, apparently, cows.

Last month, the *Guardian's* David Shariatmadari tweeted photo evidence. In the photo, a cow's face is totally blurred, raising the obvious question: Does this cow look more human than other cows? The cow next to the protected cow did not get the blur treatment, and they both seem to be fully bovine. <http://tinyurl.com/zfpffjw>

### **Aussie-born barrister is disbarred**

A barrister born in Australia has been disbarred in England after dodging thousands of pounds in railway fares following a hearing at the Bar Standards Board.

Peter Barnett (photo), 45, avoided paying the correct fare for two years from 2012 by claiming he commuted into central London from Wembley in north-west London instead of his home in Thame, Oxfordshire.

He was confronted by a suspicious ticket inspector at Marylebone station in November 2014. He ran away from the inspector but handed himself in the following day. He was convicted of six charges of fraud by false representation at the City of London magistrates court in September 2015.

During his trial the prosecution alleged he avoided nearly \$34,000 in fares but a judge later accepted Barnett's claim that he evaded only \$10,000 based on the price of a weekly ticket.

Australian-born Barnett, an Oxford graduate and Rhodes scholar, was called to the bar at Lincoln's Inn in London in 2007, but has never held a practising certificate as a barrister in England and Wales. <http://tinyurl.com/jbhss3y>



### **International briefs**

**Murders up in the USA:** Murders in the USA rose 10.8% in 2015, the biggest single-year percentage jump since 1971. FBI data shows the rising violence was driven by an increase in the murders of black men, and by an increase in the number of gun murders. At least 900 more black men were killed in 2015 than in 2014. There were roughly 1500 additional firearm murders in 2015. No other type of weapon saw a comparable increase. The number of knife murders dropped slightly. The percentage of murders committed with guns increased to 71.5%. <http://tinyurl.com/jryxp5u>

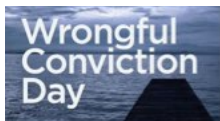
**Rural offenders do more time:** From 2006 to 2014, annual prison admissions dropped 36% in Indianapolis; 37% in Brooklyn; 69% in Los Angeles County; and 93% in San Francisco. But large parts



of rural and suburban America — overwhelmed by a heroin epidemic and concerned about the safety of diverting people from prison — have gone the opposite direction. Prison admissions in counties with fewer than 100,000 people have risen sharply, sometimes fourfold, even as crime has fallen, according to a *New York Times* analysis. As well, sentences are longer, in some counties more than fivefold. <http://tinyurl.com/zekzbgga>

**China uses long jail terms to silence critics:** A Beijing lawyer whose clients included artist Ai Weiwei has been sentenced to 12 years jail last month on fraud charges. Xia Lin, 46, his wife and supporters strongly rejected the prosecutors' claim that he had defrauded people: they said the case was part of the government's campaign to silence Chinese rights lawyers who have challenged arbitrary state power. XIA is expected to appeal. <http://tinyurl.com/j2emnk7>

## DATES



**2-6 Oct worldwide:** Highlighting Wrongful Convictions

**4-5 Oct, Darwin:** Law Research Workshop and Showcase Child Rights, Health and Law, Charles Darwin Uni. Contact: [felicity.gerry@cdu.edu.au](mailto:felicity.gerry@cdu.edu.au)

**8 Oct Brisbane:** Caxton Legal Centre 40th anniversary, Tivoli Theatre. Details: <http://tinyurl.com/hzudslk>

**13 Oct, Canberra:** Public meeting: The Cost of Cruelty: What Australia's Refugee Policies Cost. A new study shows how many billions are spent to maintain Australia's cruel refugee policies. Speakers: Lisa Button and Shane Evans, Save the Children, Australia and Dr John Minns, Associate Professor, Politics and International Relations, ANU and Refugee Action Committee, Canberra. <mailto:mail@mail@refugeeaction.org>

**14 Oct, Adelaide:** Chief Justice of Australia, Robert French, explores "Fundamental values such as respect for the rule of law, responsible government and freedom from arbitrary invasions of human rights". Radford Auditorium, Art Gallery of SA, Adelaide. Register: [flinders.edu.au/e](http://flinders.edu.au/e) events or contact E: [maria.romeo@flinders.edu.au](mailto:maria.romeo@flinders.edu.au) 08 8201 5542 Flinders Uni conjunction with Lipman Karas.legal practice.

**18-21 Oct, Melbourne:** 17th National Family Law conference, Law Council of Aust. Info: <http://tinyurl.com/guqynnc>

**24 Oct, Western Sydney (Parramatta):** The Invention of Collateral Damage: launch of public project into the processes creating a moral distinction between deliberate harm inflicted on non-combatants, and non-intentional harm as an inevitable side effect of modern warfare. Dr Jessica Whyte, Western Sydney U, Female Orphan School, Parramatta campus. Details: <http://tinyurl.com/zhlqqtq>

**24 Oct, Brisbane:** Australian Academy of Law Public Lecture – The Queensland Court of Appeal: The First 25 Years. Banco Court. Speaker: Justice Margaret McMurdo, President, Queensland Court of Appeal. Free but registering required: RSVP 3 Oct 2016 Email: Ph: 07 3247 9170.

**27-28 Oct, Melbourne:** National conference Australian Bar Association, MCG. Details: [www.abaviCbar2016.Com.au](http://www.abaviCbar2016.Com.au)

**28 Oct, Canberra:** Administrative law conference, including Justice John Griffiths, Dr Kristen Rundle, Prof Cheryl Saunders, Dr Kristina Stern, Justice Chris Maxwell, Assoc Prof Lyria Bennett Moses, Peter Leonard, Daniel Stewart, Prof John McMillan. National Museum of Australia, Acton Peninsula. <http://tinyurl.com/hr9fu27> Info: Nicole Harman E: [events.law@anu.edu.au](mailto:events.law@anu.edu.au)



**30 Oct, Australia-wide:** Rallies throughout Australia to #Bring Them HereL #Close Manus & Nauru. Details: [refugeeaction.org](http://refugeeaction.org)

**10 Dec, World:** This year is devoted to a year-long UN campaign to celebrate the 50th anniversary of two landmark international covenants on human rights: the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, which were adopted by the UN General Assembly on 16 Dec 1966.

**10 Dec, Canberra:** NATIONAL LIBERTY TREE: 5th anniversary of the planting of the Australian National Liberty Tree, by Civil Liberties Australia, National Arboretum.

**7-9 Dec, Perth:** Re-imagining Australia, Centre for Human Rights Education, Australia-Asia-Pacific Institute, and the School of Media, Culture and Creative Arts at Curtin U.. Venue: WA Maritime Museum. Details: <http://humanrights.curtin.edu.au/events/inasa-conference-2016/>

**2017:**

**23-25 March, Adelaide:** National Access to Justice and Pro Bono Conference, Law Society of SA. Info: <http://www.lawsocietysa.asn.au/na2jpb2017>

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